
(2010) 07 PAT CK 0118

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9711 of 2008

Ramanuj Kumar and Others

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Citation : (2010) 07 PAT CK 0118

Hon'ble Judges : Shiva Kirti Singh, J;Birendra Prasad Verma, J

Bench : Division Bench

Advocate : Birendra Nath Mishra, for the Appellant; Binay Kumar Pandey, CGC, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh and Birendra Prasad Verma, JJ.—Heard learned Counsel for the petitioners, learned Counsel for the Union of India and Railway authorities.

2. Altogether nine petitioners have preferred this writ petition challenging the correctness of the judgment and order of Central Administrative Tribunal, Patna Bench, Patna contained in Annexures 12 and 12/A whereby O.A. No. 73 of 2002 was dismissed on merits on 25.10.2007 and a review petition bearing R.A. No. 08/2008 arising out of the aforesaid O.A. was also dismissed on 11.03.2008.

3. According to learned Counsel for the petitioners a scheme of merger of LDC and UDC Cadre was introduced by extension of a similar scheme of 1983 for staff working in Savings Bank Control Organization of the Department of Posts and it came into the effect from 1.8.1991 vide Annexure- 1. It is the case of the petitioners that on account of further clarifications/revision of the scheme through Annexures 3 and 3/A the petitioners became entitled to a higher scale of pay which they have described as promotion because some persons allegedly juniors to them were granted higher pay under the scheme noted above. It is their further case that on account of a revised policy decision dated 17.05.2000 contained in Annexure-8 the petitioners were denied higher pay scale (so- called

promotion) although they had been waiting for the same and some persons junior to them had already got such promotion.

4. A perusal of the order of the learned Tribunal dated 25.10.2007 which is under challenge shows that the Tribunal has not considered the case of the petitioners in proper perspective in the light of the schemes noted above, particularly Annexure-8 dated 17.5.2000 which the petitioners claim to be against law as decided by the Supreme Court in the case of Union of India and Ors. v. Leelamma Jacob and Ors. (2003) 12 SCC 280. The Tribunal has considered the claim of the petitioners as simple claim for time bound promotion with effect from the date i.e. 1.8.1991 when there was no question of the petitioners having completed the normal tenure of 16 years of service necessary for claiming time bound promotion. However, one finding of the Tribunal which is adverse to the petitioners is that they have failed to establish that their seniority is adversely affected on account of promotion of any junior to higher grade.

5. Before us also the petitioners have not been able to place sufficient materials to show that they are entitled for promotion on account of such promotion being given to their juniors. In fact, their claim appears to be on the basis of Annexures-3 and 3/A which provide that when seniority is adversely affected in the sense that some juniors are placed in the next higher scale of pay then the affected persons will be considered for next higher scale of pay from the date their immediate juniors become eligible for the next higher scale. There are some riders and exceptions in the scheme noted above and neither the Tribunal has considered the matter in that perspective nor have the petitioners succeeded in placing the relevant facts before us so as to decide the issue finally.

6. So far as case of the petitioners against Annexure-8 is concerned, it is found that this decision of the Authorities dated 17.05 .2000 had adversely affected some postal employees in West Bengal and their claim was considered by the Central Administrative Tribunal, Calcutta Bench and allowed by order dated 16.08.2004 passed in O.A. No. 1148 of 2003. That order contained in Annexure-10 shows that the order dated 17.05.2000 of the Department of Posts, according to which all previous instructions had been superseded withdrawing the benefit extended to seniors was not a valid and lawful order in view of the principle of law laid down by the Apex Court in somewhat similar circumstances in respect of scheme of 1983, in the case of Union of India v. Leelamma Jacob (Supra). The Tribunal at Calcutta directed the respondents to reconsider the prayer of the applicants in the light of the aforesaid judgment of the Supreme Court. That order of the Tribunal at Calcutta has been affirmed by the Division Bench at Calcutta High Court by order dated 23.8.2005 in W.P.C.T. No. 553/2005 (Union of India and Ors v. Ranjeet Kumar Choudhary and Ors.). We have been informed by learned Counsel appearing for the Union of India that against the said judgment of Calcutta High Court, Union of India has preferred Special Leave to Appeal (Civil) 18019 of 2006 which appears to be pending with certain defects as per last order passed on 6.2.2009.

7. Learned Counsel for the petitioners has shown us from the order of the Calcutta High Court dated 23.08.2005 that the Union of India had not challenged the order of the Tribunal at Calcutta on merits and only wanted further time for complying with the order of the Tribunal. He further submitted that unless Supreme Court takes a different view, the case of the petitioners requires consideration in the light of law laid down in the case of Union of India v. Leelamma Jacob (Supra).

8. If the case of the petitioners has been adversely affected only on account of subsequent policy decision contained in Annexure-8 dated 17.05.2000 then definitely the judgment of the Apex Court in the case of Union of India v. Leelamma Jacob (Supra) will be relevant for considering their case. Since the relevant facts as noted earlier are not clear and have not been discussed in proper perspective by the learned Tribunal, we find ourselves at a disadvantage in deciding the claim of the petitioners at this stage in the present proceeding. But in the interest of justice it appears necessary that the matter be remitted to the Tribunal for giving both the parties an opportunity to place the relevant facts properly and in detail so that if the law laid down by the Apex Court in the case of Union of India v. Leelamma Jacob (Supra) is applicable to the petitioners, then they are not denied appropriate relief.

9. With the aforesaid discussions and observations the writ petition is allowed in part, the order of the Tribunal is set aside and the matter is remitted for fresh consideration in the light of observations made above.

10. There shall be no order as to costs.